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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,179	10/29/2003	Yoshitaka Oku	F-8007	6534
28107	7590	05/25/2010	EXAMINER	
JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168			ROBERTS, LEZAH	
			ART UNIT	PAPER NUMBER
			1612	
			MAIL DATE	DELIVERY MODE
			05/25/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/696,179	OKU, YOSHITAKA	
	<b>Examiner</b>	<b>Art Unit</b>	
	LEZAH W. ROBERTS	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 February 2010.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7 is/are pending in the application.

4a) Of the above claim(s)       is/are withdrawn from consideration.

5) Claim(s)       is/are allowed.

6) Claim(s) 7 is/are rejected.

7) Claim(s)       is/are objected to.

8) Claim(s)       are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on       is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No.      .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>     </u> .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>     </u> .	6) <input type="checkbox"/> Other: <u>     </u> .

## **DETAILED ACTION**

Applicants' arguments, filed February 16, 2010, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Title***

The change in title to "A cosmetic comprising ancient water and/or ancient salty water" has been noted.

### ***Claims***

#### **Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejections)**

Claim 7 stand rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Application No. 2002-343115 to Kaoru, et al.

*Applicant's Arguments*

Applicant has argued and provided evidence to support that the ancient water of the instant claim is different from that of Kaoru et al. Applicant argues the water of Kaoru et al. is contaminated with other types of water that leaks into the cracks and tears of the limestone or when the ancient water is drawn up, thus changing the properties of the ancient salt water. Therefore the reference does not encompass the water of the instant claims.

*Examiner's Response*

Applicant's arguments are not persuasive. The claims recite that the water is from sealed deposits of a fracture zone in a layer that is a phyllitic layer or an ancient limestone layer. The reference discloses that the water is found in limestone and has been closed in porous coral skeletons in the earth core depths. This is further supported by Applicant in the Remarks on page 6 stating "The ancient salty water used in Kaoru et al. is defined as "salty water having been buried in an environment shut off from the external world in depth of the crust in a state sealed in porous coral skeletons of a coral reef". The disclosure of "closed", would meet the limitation "sealed in the fracture zone". In regard to the limestone being below the metamorphic rock layer, this may be interpreted in several ways such as being beneath the metamorphic rock in such a way that the metamorphic rock is stacked above the phyllitic or limestone layer, or that the metamorphic rock is at a higher level than the phyllitic or limestone layer not necessarily stacked above the limestone or phyllitic layer. The ancient water of the

reference is obtained from the limestone that is underground in the earth core depths. Metamorphic rock may be above ground and thus it is interpreted that "the earth core depths" encompasses layers below a metamorphic rock layer as recited by the instant claims.

Although Applicant appears to show that the water of Kaoru et al. has different properties (such as stability of the oxidation reduction potential, and the components in the two types of water) than the water of the instant claims, the instant claims do not make the distinction between the water of the reference and the water of the instant claims by reciting specific characteristics of the water encompassed by the instant claims when it is used in the cosmetic. The claims have been interpreted by their broadest reasonable interpretation, therefore the reference anticipates the claims as written because the reference discloses water that has been closed off from the environment, which encompasses sealed, and is found in an ancient limestone layer being below a metamorphic rock layer.

Claim 7 is rejected.

No claims allowed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/  
Examiner, Art Unit 1612

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612